

Appl. No.: 10/773,635
Amendment dated July 5, 2006
Reply to Office Action of January 5, 2006

REMARKS/ARGUMENTS

In view of the following remarks, reexamination and reconsideration of this application, withdrawal of the rejections, and formal notification of the allowability of all claims as presented are earnestly solicited. In response to the Office Action, Applicants respectfully present the following remarks to highlight the patentable subject matter of the pending claims. It is believed that the pending claims define patentable subject matter over the references cited by the Examiner and notice to such effect is requested at the Examiner's earliest convenience.

Claim Status

Claims 1-75 are pending. Claims 1, 19 and 57 have been amended to recite the subject matter of corresponding dependent Claims 5, 22 and 61. Accordingly Claims 5, 22 and 61 have been cancelled. Claims 35 and 46 have also been amended. Support for the various amendments can be found throughout the specification and drawings such as, for example, at page 10, lines 2-5. Thus, no new matter has been added.

Claim Rejections – 35 U.S.C. §112

Examiner has rejected Claims 1-75 under 35 U.S.C. §112, second paragraph as being indefinite for failing to point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, Examiner indicates that “the recitation of ‘any rod’ is ambiguous.” In response, independent Claims 1, 19, 35, 46 and 57 have been amended to remove the recitation of “any rod” as suggested by the Examiner. It is believed that these amendments serve to overcome the pending rejections of Claims 1-17 under 35 U.S.C. §112, second paragraph.

Claim Rejections – 35 U.S.C. §103

Examiner has rejected Claims 1-75 under 35 U.S.C. §103(a) as being obvious over U.S. Patent No. 5,738,159 to O'Brien (“O'Brien”) in view of U.S. Patent No. 3,487,875 to Shukat *et al.* (“Shukat”). In particular, Examiner has stated that O'Brien discloses the claim elements of Claim 1-75 except the “slats, or equivalent thereto, dowels.” The Examiner further cites Figure 5

of Shukat and states that “it would have been obvious to modify O’Brien to have such slats so as to provide defined pleats.” As listed above, Applicants have amended Claims 1, 19, 35, 46, and 57 in response to this rejection. Furthermore, Applicants respectfully submit that neither Shukat nor O’Brien provide the suggestion or motivation to modify O’Brien with the stiffening members of Shukat to obtain the claimed invention.

1. **O’Brien And Shukat, Alone Or In Combination, Do Not Teach Or Suggest The Claimed Invention.**

Amended independent Claims 35 and 46 now require that the recited multiple rings (positioned at or near the top of the panel) are non-releasably operably engaged with the panel. This limitation is not disclosed in either O’Brien or Shukat. Furthermore, amended independent Claims 1, 19 and 57 include the subject matter of corresponding cancelled Claims 5, 22, and 61 and therefore now recite a sleeve that is non-releasably operably engaged with the panel, wherein the sleeve comprises at least two separate sections extending laterally along at or near the top of the panel (as shown, for example, in Figure 6, element 10 of the present application). Likewise, the newly added limitations of Claims 1, 19 and 57 are not disclosed in either O’Brien or Shukat.

For example, with respect to amended Claims 35 and 46, all of the window panel embodiments disclosed in O’Brien include either loops **20** or button fasteners **22** for “detachably affixing a corresponding number of tabs [or rings **92, 94**] to drape.” (See O’Brien, col. 5, lines 22-23). Furthermore, Shukat is directed to a self-operating drapery requiring an array of “collateral hardware” for installation. (See e.g., col. 2, lines 59-62) (“Rotatably mounted by means of brackets e.g., **27** and **28** between side walls **22** and **23** of support means **20** is shade roller **30**.”) None of the embodiments disclosed in Shukat disclose multiple rings at all, much less multiple rings that are non-releasably operably engaged with the panel so as to minimize the use of collateral hardware (such as the loops **20** or button fasteners **22** and/or separate rings **92, 94** of O’Brien, for example). Thus, the deficiencies of O’Brien are not cured by the disclosure of Shukat.

Furthermore, with respect to amended independent Claims 1, 19 and 57, while O'Brien generally discloses that a rod or pole may be inserted through an upper hem **48** or rod pocket **52** to support the window drape, O'Brien does not teach or suggest a panel and/or window treatment having a sleeve that is non-releasably operably engaged with the panel, wherein the sleeve comprises at least two separate sections extending laterally along at or near the top of the panel so as to create the "broken rod sleeve" configuration (shown, for example, in Figure 6 of the present application) without the need for "collateral hardware" (such as the removable tabs **66** of O'Brien, for example). Furthermore, and as discussed above, because Shukat does not teach or suggest the use of a sleeve (much less a sleeve comprising at least two separate sections, as recited in amended Claims 1, 19 and 57), the deficiencies of O'Brien are not cured by the disclosure of Shukat.

Unlike O'Brien and Shukat, because the sleeve (comprising at least two separate sections) and/or multiple rings recited in amended Claims 1, 19, 35, 46 and 57 are non-releasably operably engaged with the panel and/or window treatment, the claimed invention can be suspended without using "collateral hardware" such as, for example, the detachable loops 20 or button fasteners 22 and/or separate rings 92, 94 of O'Brien. In one preferred embodiment, the panel of the present invention may be installed by sliding it onto any conventional curtain rod without the use of "collateral hardware". *See Specification page 16, lines 2-3. The art of record discloses no embodiment having any substantial degree of interchangeability* as that required by the claimed invention.

Further, unlike O'Brien and Shukat, the raisable panel of the claimed invention may be suspended on a traditional rod that was already installed for another panel, wherein the previous panel is completely different in terms of structure and shape relative to the claimed invention. *See Specification page 16, lines 4-8. Here, the present invention may easily be slid onto any rod having a diameter less than that of the sleeve and/or the multiple rings, as is now specified in the claims. Thus, there is no need to attach the present panel directly to a mounting board using hardware, and to mount the board to the inside of the window frame. See Specification page 16, lines 6-8. Ordinarily, the installation hardware for one window treatment is not suitable for another window treatment. See Specification page 15, lines 7-11. However, the present*

invention can be installed and suspended from any previously installed rod customarily used for other types of window treatments. Such interchangeability is not taught in either O'Brien or Shukat. Thus, the present invention provides the user with greater flexibility in installation as compared to O'Brien and Shukat.

2. There is No Suggestion or Motivation to Modify O'Brien With the Stiffening Members of Shukat to Obtain the Claimed Invention.

As described above, even if one were to properly combine Shukat and O'Brien, the proposed combination still does not teach or suggest the newly-added recitations of amended independent claims 1, 19, 35, 46 and 57. Furthermore, Applicants respectfully submit that there is no suggestion or motivation to modify O'Brien with the stiffening members of Shukat to obtain the claimed invention as is required to establish a prima facie case of obviousness under 35 U.S.C. §103(a).

Applicants first note that the Federal Circuit has held that "if the proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification." See MPEP §2143.01, citing *In re Gordon*, 733 F.2d 900, 221 U.S.P.Q. 1125 (Fed. Cir. 1984). O'Brien states that "it is a primary object of the present invention... to provide a window drape capable of being selectively arranged to achieve different styles." See O'Brien, column 1, lines 51-54. Applicants respectfully submit that modification of the window drape of O'Brien with the addition of straight "stiffening members" (as generally disclosed in Shukat) would render the O'Brien window drape unsatisfactory for achieving different styles (such as the gathered, scalloped, and billowing styles disclosed in O'Brien) with respect to Figures 12 and 14).

Furthermore, the Federal Circuit has consistently stated that a finding of obviousness requires a specific teaching, motivation, or suggestion to combine the teachings of individual items of prior art. See, e.g., *In Re Sang Su Lee*, No. 00-1158 (Fed. Cir. January 18, 2002) (factual question of motivation to combine is material to patentability and could not be resolved on subjective belief and unknown authority); *C.R. Bard, Inc. v. M3 Systems, Inc.*,

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157 F.3d 1340, 1352 (Fed. Cir. 1998) (a showing of a suggestion, teaching, or motivation to combine is an essential evidentiary component of an obviousness holding); *In re Fritch*, 972 F.2d 1260, 1265 (Fed. Cir. 1992) (Examiner can satisfy burden of obviousness in light of combination only by showing some objective teaching leading to the combination); and *In re Fine*, 837 F.2d 1071, 1075 (Fed. Cir. 1988) (evidence of teaching or suggestion essential to avoid hindsight).

Instead of providing a motivation to combine the teachings of O'Brien and Shukat, O'Brien instead teaches away from including slats or “stiffening members” in the disclosed window drape, since O'Brien discloses a “window drape capable of being selectively arranged to achieve different styles” (see O'Brien, column 1, lines 53-54). More particularly, the window shade disclosed in O'Brien is disclosed as being capable of forming an “Austrian style drape” wherein the face panel is adjusted to “be gathered upwardly.” See O'Brien, column 6, lines 43-63 and Figure 12. Furthermore, the window drape of O'Brien is further disclosed as being capable of forming a “balloon shade” wherein the lower end of the face panel is “gathered upwardly into a gently scalloped, billowing shape as shown in FIG. 14.” See O'Brien, column 7, lines 1-11 and Figure 14. The slats or “stiffening members” (52, 54) disclosed generally by Shukat; in contrast, serve “to prevent curling and wrinkling of the sheet member.” See Shukat, column 3, lines 53-54 (emphasis added). Thus, the slats or “stiffening members” disclosed by Shukat, would prevent the “upward gathering” and “scalloped, billowing shapes” or other “curling and wrinkling” shown in Figures 12 and 14 of O'Brien, if added to the window drape of O'Brien.

Thus, Applicants respectfully submit that there is no suggestion or motivation to modify the O'Brien window shade with the addition of the slats generally disclosed in Shukat.

CONCLUSION

In conclusion, O'Brien or Shukat, alone or in combination do not teach, suggest, or provide motivation for the claimed invention. Accordingly, in view of the above differences between the Applicants' invention and the cited reference, Applicants submit that the present invention, as defined by the pending claims, is patentable over the references cited in the Office

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Action. As such, for the reasons set forth above, Claims 1-75 are believed to be in condition for immediate allowance and notice to such effect is respectfully requested at the Examiner's earliest opportunity.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR §1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,

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